DOCUMENT RESUME

ED 279 250 HE 020 085

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TITLE Faculty Discipline [and] Faculty Work Stoppages, 1986.
INSTITUTION City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education and the Professions.
PUB DATE Dec 86
NOTE 11p.
AVAILABLE FROM National Center for the Study of Collective Bargaining in Higher Education and the Professions, 17 Lexington Avenue, Box 322, New York, NY 10010 ($4.00).
PUB TYPE Collected Works - Serials (022) -- Reports - Descriptive (141)
JOURNAL CIT Newsletter: National Center for the Study of Collective Bargaining in Higher Education and the Professions; v14 n5 Nov-Dec 1986

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Collective Bargaining; *College Faculty; Community Colleges; Comparative Analysis; Contracts; Higher Education; *Teacher Discipline; *Teacher Strikes; *Unions; Universities

ABSTRACT

Faculty collective bargaining agreements were surveyed to determine the extent and frequency that contractual clauses dealing with discipline have been negotiated. Data on college faculty work stopages for 1986 were also collected. Excerpts from collective bargaining agreements concerning disciplinary actions, reprimands, just cause and due process, and discipline of tenured and/or tenure-track faculty are provided for the following institutions: City University of New York; Foothill-De Anza Community College District, Indiana; Bard College; University of Detroit; the University of Connecticut; Long Island University-C.W. Post; and Lewis and Clark Community College. In addition to a brief description of faculty work stoppages at 11 colleges in 1986, tables indicate the agent for each college, the number of work days of the 1986 strike, and the level of the institution (2 or 4 years). Data on the number of back-to-school strikes for fall semesters for 1977 through 1986 are also provided. The nine faculty stopages during fall 1986 was the highest total in the past 7 years. (SW)

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NEWSLETTER - National Center for the Study of Collective Bargaining in Higher Education and the Professions

Published at Baruch College - City University of New York - Vol. 14, No. 5.
Nov/Dec 1986

FACULTY DISCIPLINE

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

Published at Baruch College • City University of New York • Vol. 14, No. 5 • Nov/Dec 1986

FACULTY DISCIPLINE

Disciplining faculty is a subject that, until recently, has either been overlooked or ignored in collective bargaining in higher education. The long-standing presumption that junior and untenured faculty could be denied reappointment without reasons being stated and that once the individual accrued tenure the institution lost whatever controls and sanctions it had in this area is deeply rooted in the academy. Tenured faculty were thought to be immune from traditional disciplinary procedures; peer review and professional sanctions would ensure the continued maintenance of the highest professional standards and integrity. The academy would regulate itself in the same manner as it had for the past hundreds of years. In the case of the individual faculty member, his or her inner check would prevail. In this respect, the professoriate would function in the same manner as other professions, i.e., lawyers, engineers and medical doctors, who police themselves. Thus, there was thought to be no need to negotiate or memorialize disciplinary procedures in faculty contracts.

With the emergence of academic collective bargaining, came a concern for the development of disciplinary procedures, not unlike those found in contracts for other professional employees. In part, this was motivated by the desire of faculty unionists to obtain protections from what was perceived as arbitrary and capricious actions by college administrators. Additionally, those who were familiar with labor agreements in elementary and secondary education employment relationships sought to incorporate many of the protections contained therein.

The National Center conducted an informal survey of faculty collective agreements in higher education to ascertain the extent and frequency that contractual clauses dealing with discipline have been negotiated. While no claim is set forth as to the merits of such clauses, it was apparent that this issue is among those at the forefront of academic collective bargaining and can no longer be treated as an isolated aberration existing at select institutions.

Contractually, faculty discipline has been treated in a variety of ways. First, and perhaps foremost, is the incorporation of the traditional "just cause clause" into the agreement. The standard "just cause clause" provides that "no faculty member shall be reprimanded, suspended, discharged, reduced in rank or compensation, or otherwise disciplined except for just cause and without due process." Originally intended for use in contracts between public school districts and their teacher unions, the "just cause clause" has now become a widely used safeguard. It should be noted that even in the absence of such a clause, many arbitrators and labor relations agencies apply the just cause concept as a means of ensuring employee protections and rights.

The second type of clause concerns the development of somewhat lengthy and complex rules, regulations and procedures which address a variety of actions which might result in the imposition of discipline. These clauses seek to identify the types of actions for which discipline might be imposed. Furthermore, they delineate virtually every aspect of the disciplinary procedure ranging from the makeup and voting procedures of select committees on discipline to payroll and health insurance concerns for discharged faculty members. Each clause is unique to the particular institution involved and has marginal transference value to other contracts.

Third, several collective bargaining agreements reference the AAUP Policy Documents and Reports "Red Book" guarantees and procedures. These statements include, but are not limited to, "nonreappointment", "extramural utterances", "political activity", "academic freedom", "discrimination" and "ethics".

While the National Center does not advocate the inclusion/exclusion of faculty disciplinary clauses in collective agreements, we believe that the following representative language will be of value to those seeking further information in this area.

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THE CITY UNIVERSITY OF NEW YORK/PSC

ARTICLE 21
DISCIPLINARY ACTIONS

21.1 Members of the Instructional Staff may be disciplined by removal, suspension with or without pay, or any lesser form of discipline for one or more of the following reasons, ...

(a) Incompetent or inefficient service;

(b) Neglect of duty;

(c) Physical or mental incapacity;

(d) Conduct unbecoming a member of the staff. This provision shall not be interpreted as to constitute interference with academic freedom.

21.2 Disciplinary proceedings shall be initiated by the president of the college by the service of a written notice of an intent to prefer charges upon the employee, which shall set forth:

(a) the proposed charges against the employee, and

(b) the proposed penalty.

21.7.a In the case of an employee who is tenured or certificated and upon whom a penalty of dismissal or of a monetary nature is imposed by the Chancellor's Designee, the employee may elect either to:

(1) proceed to disciplinary arbitration..., or

(2) elect to have the matter forwarded to a CUNY hearing committee.

21.8 Disciplinary Arbitration

21.8.a The City University and the PSC shall jointly agree on a panel of disciplinary arbitrators. ...

(4) The disciplinary arbitrator shall be limited to determinations of guilt or innocence and the sufficiency of grounds for the penalty.

21.9 CUNY Hearing Committee

A CUNY Hearing Committee shall be convened for tenured and certificated employees against whom the Chancellor's Designee has imposed a penalty of dismissal or of a monetary nature and who elect to proceed hereunder.

21.11 Any person against whom charges have been made may, at any time during the pendency of the charges, be suspended by the president of the college. Such suspension shall be without loss of pay.

A person suspended with pay shall be available for all procedures mandated by Article 21. Upon suspension with pay, notwithstanding any other provision of this Agreement, any request to be absent from any aspect of these procedures must be approved in advance by the Vice Chancellor for Faculty and Staff Relations upon the recommendation of the President. Failure to be available for any Article 21 proceeding without said approval of a request to be absent for the period specified in the approval of the request shall result in loss of pay status for a period of three weeks. Such period of non-pay status shall be discontinued as of the date of the proceeding if a proceeding under this article is scheduled and held within that three-week period and the person continues to be unavailable, the person shall be subject to further removal from pay status for successive three-week periods until such time as the proceeding is scheduled and held. Said loss of pay status cannot be charged to annual leave, temporary disability leave, or other paid leave.

21.12 Adjuncts shall be subject to discharge for just cause, subject to the Grievance and Arbitration article.

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT/IND

ARTICLE XXXI
REPRIMAND OF CERTIFICATED EMPLOYEES

31.1 The Board shall not issue a written reprimand to any certificated employee unless:

31.1.1 The certificated employee has the opportunity to meet with appropriate supervisors, is informed of the complaints on which the reprimand is based, and is given the opportunity to respond to the complaints;

31.1.2 The certificated employee receives prior notification of the purpose of the meeting; and

31.1.3 The certificated employee is notified of his or her right to representation at a meeting.

31.2 In the event that a certificated employee is not represented by the FA at the meeting provided for in Section 31.1, FA shall have the right to be present at the meeting and to state its views, unless the certificated employee objects to FA's presence, and so states in writing.

31.3 The Board itself shall take no action to reprimand a certificated employee unless:

31.3.1 The certificated employee is given a hearing at which he or she is informed of the complaints upon which the reprimand is based and is given the opportunity to respond to the complaints;

31.3.2 The certificated employee receives prior written notification of the purpose of the hearing;

31.3.3 The certificated employee is notified in writing of his or her right to representation at the hearing; and

31.3.4 FA has been notified of the intent to conduct such a hearing.

31.4 In the event that a certificated employee is not represented by FA at the hearing provided for in Section 31.3.1, FA shall have the right to be present at the hearing and to state its views, unless the certificated employee objects to FA's presence, and so states in writing.

31.5 If a certificated employee is reprimanded, he or she may submit the matter to the grievance procedure set forth in Article V by alleging that the procedures contained in this article were not followed or that the action of the supervisor or the Board itself in reprimanding the certificated employee was arbitrary or capricious.

31.6 A reprimand is any formal written rebuke or reproof by the Board itself or an appropriate supervisor placed in a certificated employee's on-campus personnel file.

BARD COLLEGE/AAUP

V. ADEQUATE CAUSE FOR DISMISSAL

After the expiration of the probationary period, Faculty members should have tenure until their retirement for age, and their service should be terminated only for adequate cause, or, under extraordinary circumstances, because of financial exigencies. (Handbook, I.6.1) "Adequate cause," as used above, is defined as refusal, failure, or prolonged inability to perform contractual duties in accordance with recognized professional standards.

If the President believes there is adequate cause for the dismissal of a Faculty member, the President will consult with the Faculty Senate. Dismissal proceedings will be initiated only upon a detailed written statement of charges by the President. After receipt of such a statement of charges, the Faculty member shall have three weeks to request the Faculty Executive Committee to arrange a hearing.

At the request of the Faculty member, the Faculty Executive Committee will arrange a hearing on the charges before an appropriate ad hoc committee of the Faculty, which the Faculty Executive Committee will designate in consultation with the Chapter Executive Committee.

The hearing will consider only those charges contained in the President's written statement. The Faculty member will be provided an opportunity to make written and oral answer to the charges, to have with him or her an advisor of his or her own choosing who may act as counsel, to call witnesses in his or her behalf, and to have a full record of the hearing. In the hearing of charges of incompetence, the testimony shall include that of other teachers and scholars, either from the College or from other institutions.

The findings and recommendations of the Hearing Committee will be given in writing to the President and to the Faculty member. Within three days, the President will communicate in writing to the Faculty member whether he or she will withdraw the charges or impose sanctions. However, if a sanction is to be imposed, the Faculty member shall have three weeks to request review of the hearing record and of the decision of the President by the Board, which shall make a final decision.

Except as to procedural matters specifically covered in this Article, the procedures to be followed by the Faculty Executive Committee, the

Hearing Committee, and the Board shall be determined respectively by each of these bodies. However, in determining such procedures, these bodies shall be guided by the American Association of University Professors 1972 Recommended Institutional Regulations on Academic Freedom and Tenure, insofar as such regulations are reasonably appropriate to the situation and resources of the College.

UNIVERSITY OF DETROIT/NEA

5.10 **Discipline and Discharge**
The employer will discipline or discharge an employee only for just cause. An employee shall have the right to a Union representative present at any meeting called for the purpose of discussing or implementing the discipline or discharge of the employee. The Employer will follow progressive procedures in the discipline or discharge of an employee. In implementing such progressive procedures, the Employer must notify an employee of any infraction, upon which it intends to rely in discipline or discharge, within six months of the date of its occurrence.

THE UNIVERSITY OF CONNECTICUT/AAUP

ARTICLE 27
DISCIPLINE FOR TENURED AND/OR TENURE-TRACK FACULTY

The parties wish to encourage open communication between administrators and faculty and agree that whenever possible problems should be resolved informally before these procedures are initiated. The parties agree that this Article shall not be used to restrain faculty members in the exercise of their academic freedom or their rights as citizens.

The parties agree that, except for serious misconduct, dismissal should occur only as the final step in a progressive disciplinary system and each instance of misconduct shall be judged solely on its own factual situation.

For tenured or tenure-track faculty dismissal or discipline which is the result of incompetence, or failure to meet satisfactory standards of job performance, or failure to meet continuing educational requirements, or to fulfill professional commitments shall not fall within the purview of this Article, but shall be dealt with exclusively under the University By-Laws.

A. Discipline shall be for just cause such as:

1. neglect of assigned responsibilities;
2. insubordination, or noncompliance with University Laws and By-Laws which relate to faculty;
3. the use of fraud, collusion, concealment, or misrepresentation of a fact material to obtaining employment with the University and/or obtaining tenure, promotion, salary increase or other benefit;
4. sexual harassment or other conduct which impairs the rights of students or other staff members.

B. Procedures to be followed for dismissal, demotion in rank and/or salary, or suspension without pay:

1. The faculty member shall receive in writing a statement of the reasons for the action being recommended.
2. Within seven calendar days of receiving the written statement (B.1),the faculty member may request a hearing before his/her Dean or Director or designee with an AAUP representative present, should the faculty member so desire. This hearing shall be held within seven calendar days of the employee's request.
3. Within seven calendar days of receiving the recommendation in B.2 above, the staff member shall have the right to appeal to the Vice President for Academic Affairs or his/her designee. At such appellate hearing, the staff member shall have the right to be represented by the AAUP.
4. The decision of the Vice President or designee may be appealed to arbitration on the merits under Article 10 of this agreement. Warnings, reprimands and other less severe discipline shall be grievable through steps B.2 and B.3 above but shall not be grievable to arbitration.

C. 1. If the University judges that the grounds for dismissal or discipline require the immediate suspension of the faculty member, the suspension shall be with pay until the hearings described in B.2 and B.3 above have taken place.
2. In the event the discipline involves the loss of or reduction in salary, the salary shall not be withheld until after the arbitration decision or four months from the initiation of the discipline at B.4, whichever is sooner.

D. For cases involving discipline or

dismissal for misconduct, the procedures outlined above supersede Section XV. E, F, G, H and Q of the 1981 edition of the Laws and By-Laws.

E. The parties agree that the PTR procedures should not be used to deal with issues of misconduct which are more appropriately dealt with under the disciplinary procedures. In no case shall the outcome of the PTR (promotion, tenure, or reappointment) process be construed as falling under this Article.

F. The continuation of Article 27 (discipline for tenured and tenure-track faculty) is subject to renegotiation at the end of the contract and may not be carried forward automatically.

LONG ISLAND UNIVERSITY-C.W. POST/AFT

ARTICLE XXIII
JUST CAUSE AND DUE PROCESS

Section 1.

No Unit member may be reprimanded, suspended, discharged, reduced in rank or compensation, or otherwise disciplined, except for just cause and with due process.

Section 2.

A Unit member who is subject to any disciplinary action specified above shall be advised in writing by certified mail of the charge(s) and the disciplinary action against him. A copy of such notice shall be sent by certified mail simultaneously to the Union. ...

Section 4.

In cases of disciplinary action based on professional misconduct or incompetence which results in arbitration, the following procedure may be employed at the arbitration stage. ...

Section 5.

Unit members shall be discharged for incompetence or misconduct for one or more of the following reasons for which written charges are served by the Administration on the individual, with notice to the Union as aforesaid:

A. Incompetent service or gross professional misconduct, including that resulting from either physical or mental disability.

B. Gross neglect of duties.

C. Commission of a serious criminal offense (such as conviction of a felony).

D. Material and substantial misrepresentation of facts with respect to professional and academic qualifications, previous employment, academic credentials, publications, and other professional achievements.

Discharge of a person on tenure may be taken up as a grievance directly at Step 2 of the Grievance Procedure provided under this Agreement within thirty (30) calendar days of such removal or suspension.

LEWIS AND CLARK COMMUNITY COLLEGE, DISTRICT NO. 536/NEA

Section 7.10. Discipline. Enforcement of discipline (e. g., suspension without pay, written reprimand, etc.) shall be for just cause. It is especially agreed that this section shall not apply to a decision by the Board to terminate a faculty member or not to renew the contract of a faculty member and any such decisions to terminate or not to renew shall not be subject to the grievance procedure set forth in this Agreement. Nothing in this section constitutes a waiver of any kind whatsoever of what may be a faculty member's rights under federal or State of Illinois law in effect at the time of such a termination.

NATIONAL CENTER NEWSLETTER

A publication of the National Center issued five times during the year. Annual subscription rate: $20; single copy, $4.00; free to Center members. Back issues available. ISSN 0737-9285

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FACULTY WORK STOPAGES - 1986

BACK-TO-SCHOOL STRIKES

There was a noticeable increase in faculty work stoppages during the 1986-1987 fall semester. Nine strikes were reported, making this the highest total in the past seven years. Faculty at public colleges and universities were involved in seven stoppages, the other two occurred at private institutions. With respect to institutional and agent classification, four strikes occurred at two-year institutions, while five took place at four-year institutions. The NEA was involved in four stoppages, the AAUP three, and the AFT two. The average length of each strike was 9.1 work days. The longest was at Thornton Community College (35 days), the shortest at Wayne State University (one day).

Back-to-school strikes occurred at Bellevue Community College in Washington, Fairleigh Dickinson University in New Jersey, Lake Land College in Illinois, Mercer County Community College in New Jersey, Mott Community College in Michigan, Roger Williams College in Rhode Island, Temple University in Pennsylvania, Thornton Community College in Illinois and Wayne State University in Michigan. The main impasse items in each of these stoppages appears to have been financial and related salary questions. At four of these institutions, faculty engaged in repeat strikes. Previous stoppages had occurred at Fairleigh Dickinson in 1979, Mott Community College in 1966 and 1969, Thornton Community College in 1975, 1977, 1984 and Wayne State University in 1976, 1978 and 1980.

STRIKE REPORT

Set forth below is a brief description of each reported stoppage:

A. **BELLEVUE COMMUNITY COLLEGE** Faculty at Bellevue engaged in a seven-day work stoppage over the issue of salaries. A one-year successor agreement brought an end to the impasse. The bargaining unit consists of 250 full- and part-time faculty which have been represented by the NEA since 1972.

B. **FAIRLEIGH DICKINSON UNIVERSITY** Governance was the major issue in this seven-day strike. The college administration sought to have previously negotiated governance clauses removed from the contract, while the AAUP unit sought to maintain the status quo. The administration has filed a motion for "Revocation of Certification" with the NLRB in an attempt to assert the Yeshiva doctrine. They claim that the original unit certification issued in 1974 should now be revoked. Although the strike has now ended the Yeshiva litigation remains. The faculty unit at the university is 495 full- and part-time and have been represented by the AAUP since 1974.

C. **LAKE LAND COLLEGE** The faculty at Lake Land College engaged in a 20-day strike, their first since the AFT was recognized as the bargaining agent in 1968. A two-year successor agreement ended the impasse for the unit of 104 full-time faculty.

D. **MERCER COMMUNITY COLLEGE** Financial issues and a salary reopener were the major causes of the three-day strike at Mercer. The strike ended when faculty returned to work pursuant to a court order. The college remained open during the strike as classes were taught by administrators and adjunct faculty. The NEA has been the bargaining agent for the 127 member unit at Mercer since 1970.

E. **MOTT COMMUNITY COLLEGE** The faculty at Mott Community College engaged in their third work stoppage since they were first organized in 1966. The seven-day strike ended when a new agreement was reached. The NEA is the bargaining agent for the 196 faculty members.

F. **ROGER WILLIAMS COLLEGE** Salary was the major impasse item in this two-day work stoppage. The NEA has been the bargaining agent at the college since 1972, representing a unit of 108 full-time and 44 part-time faculty.

G. **TEMPLE UNIVERSITY** The AAUP Chapter at Temple engaged in a 15-day work stoppage. Salaries were major issue in this the first strike to have occurred at Temple since the faculty were first organized in 1972. The bargaining unit at Temple consists of 1,052 faculty.

H. **THORNTON COMMUNITY COLLEGE** In the longest strike of the fall semester, 35 days, the faculty at Thornton Community College engaged in their fourth work stoppage since they were first organized in 1971. The major issues involved were economic. The strike ended when the parties agreed to submit the outstanding issues to binding arbitration. The AFT has been the bargaining agent since 1971 for the 138 members of the bargaining unit.

I. **WAYNE STATE UNIVERSITY** In a stoppage involving the largest number of faculty in the fall semester, the 1,378 members of the bargaining unit at Wayne State University engaged in a one-day strike. The major issues involved were merit pay, salary adjustments and tenure. This was the third strike since the AAUP became the bargaining agent in 1972.

SPRING STRIKES

Four strikes were reported during the 1986

Spring Semester. Two of these occurred at Berklee College of Music and involved separate bargaining units; full-time faculty and part-time faculty. Both units were newly organized and represented by the AFT. The longest strike of the entire year occurred at Jefferson Technical College, Ohio, another newly organized unit engaged in a 96-day walkout. In the only strike to occur at a nonunionized institution, the faculty and students at New York Chiropractic Institute engaged in a lengthy strike over the removal of certain members of the Board of Trustees.

A. **BERKLEE COLLEGE OF MUSIC** Two work stoppages, one by full-time and the other by part-time faculty were conducted at Berklee during the spring semester. Both units were negotiating their initial contracts and were represented by the AFT. The fourteen-day strike ended with an agreement for a three-year contract. The AFT is the bargaining agent for the unit of 151 full-time faculty as well as for the adjunct unit of 54.

B. **NEW YORK CHIROPRACTIC INSTITUTE**

The only strike by nonunionized faculty occurred at this professional school. Students and faculty took part in a three-week work stoppage in an attempt to persuade the New York State Board of Regents to remove six trustees. Although technically not included in our strike tabulations, this incident was of sufficient interest to warrant inclusion in this report.

The Tables below provide statistical information on work stoppages in 1986 as well as a compilation of fall back-to-school strikes for the period 1977-1986.

TABLE ONE
STRIKE SUMMARY
"BACK-TO-SCHOOL STRIKES" - FALL SEMESTER
1977-1986

Fall Semester	Number of Strikes
1977	6
1978	10
1979	11
1980	8
1981	4
1982	0
1983	2
1984	6
1985	6
1986	9

TABLE TWO
FACULTY WORK STOPPAGES - 1986
FALL SEMESTER 1986-87 - "BACK-TO-SCHOOL STRIKES"

Institution	Agent	2/4 Yr.	Length (Work Days)
Bellevue C. C.	NEA	2	7
*Fairleigh Dickinson	AAUP	4	7
Lake Land College	AFT	2	20
Mercer C. C.	NEA	2	3
Mott C. C.	NEA	2	7
*Roger Williams College	NEA	4	2
Temple University	AAUP	4	15
Thornton C. C.	AFT	2	35
Wayne State University	AAUP	4	1

*Private Institutions

TABLE THREE
FACULTY WORK STOPPAGES - 1986
SPRING SEMESTER 1986

Institution	Agent	2/4 Yr.	Length (Work Days)
*Berklee Coll. of Music (f/t)	AFT	4	14
*Berklee Coll. of Music (p/t)	AFT	4	14
Jefferson Tech. College	AFT	2	96

Source: NCSCBHEP Research

15th ANNUAL CONFERENCE

THE FACULTY LIFE CYCLE: *A LEGAL PERSPECTIVE*

- RECRUITMENT
- COMPENSATION
- TENURE
- RENEWAL
- RETIREMENT
- PROFESSIONALIZATION

THE NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS
BARUCH COLLEGE/CUNY

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